

FILED
IN CLERKS OFFICEIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

2005 OCT -7 P 2:39

VISION BIOSYSTEMS (USA))	U.S. DISTRICT COURT
TRADING INC.,)	DISTRICT OF MASS.
)	
Plaintiff,)	
)	
v.)	Civil Action No. 03-CV-10391-GAO
)	
VENTANA MEDICAL SYSTEMS, INC.,)	
)	
Defendant.)	
)	
VENTANA MEDICAL SYSTEMS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-CV-10614-GAO
)	
VISION BIOSYSTEMS INC.,)	
)	
Defendant.)	

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
OF NON-INFRINGEMENT BASED ON COLLATERAL ESTOPPEL**

Plaintiff Vision Biosystems, Inc. formerly known as Vision Biosystems (USA) Trading Inc. ("Vision"), by and through counsel, respectfully moves this Court for summary judgment of non-infringement of U.S. Patent No. 6,352,861 (the "'861 patent"). In support of its motion, Vision refers the Court to its memorandum in support of the motion for summary judgment, statement of undisputed facts, Declaration of Ross Barrow, and Declaration of Richard Wydeven filed concurrently.

Vision also moves this Court to modify its September 30, 2004 Memorandum and Order and vacate its earlier finding of infringement in favor of Ventana Medical Systems, Inc.

For the reasons set forth in the attached Memorandum of Law, Plaintiff respectfully requests that the Court grant this motion.

Dated: October 6, 2005

Respectfully submitted,

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*Attorneys for Plaintiff
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FOR THE DISTRICT OF MASSACHUSETTS

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VISION BIOSYSTEMS (USA)
TRADING INC.,

Plaintiff,

v.

VENTANA MEDICAL SYSTEMS, INC.,

Defendant.

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U.S. DISTRICT COURT
DISTRICT OF MASS.

Civil Action No. 03-CV-10391-GAO

VENTANA MEDICAL SYSTEMS, INC.,

Plaintiff,

v.

VISION BIOSYSTEMS INC.,

Defendant.

Civil Action No. 05-CV-10614-GAO

LOCAL RULE 7.1 CERTIFICATION

Prior to filing this motion, and in accordance with Local Rule 7.1(a)(2), Plaintiff's counsel Elizabeth A. Leff conferred with Defendant's counsel. During that conference, Defendant's counsel represented that Ventana does not consent to this motion.

Dated: October 7, 2005

Respectfully submitted,

By: 

E. Anthony Figg (admitted *pro hac vice*)

Elizabeth A. Leff (admitted *pro hac vice*)

Richard Wydeven (admitted *pro hac vice*)

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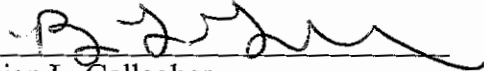
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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2005, I caused a true and correct copy of the foregoing to be served upon the following counsel of record, by first class mail, postage prepaid, or as otherwise indicated


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[PROPOSED] ORDER

This matter is before the Court on the motion of Plaintiff, Vision Biosystems, Inc. formerly known as Vision Biosystems (USA) Trading Inc. ("Vision"), for summary judgment of non-infringement based on collateral estoppel.

This matter having been fully briefed and considered by the Court, it is hereby ORDERED:

That Vision's motion for summary judgment of non-infringement of U.S. Patent No. 6,352,861 is GRANTED; and

The earlier finding of infringement in favor of Ventana Medical Systems, Inc. in the Court's September 30, 2004 Memorandum and Order is VACATED.

So ordered this _____ day of _____, 2005.

UNITED STATES DISTRICT JUDGE